



CONSERVATION LAW FOUNDATION

February 28, 2006

Department of Interior
Mineral Management Service
Attention: Rules Processing Team (RPT)
381 Elden Street
MS-4024
Herndon, VA 20170-4817

RE: Alternate Energy-Related Uses on the Outer Continental Shelf – 1010 – AD30

To Whom It May Concern:

Conservation Law Foundation, Inc. (CLF) is pleased to submit the following comments in response to the U.S. Department of the Interior, Mineral Management Service's (MMS) request for public comments on its Federal Register Advanced Notice of Proposed Rulemaking to implement Section 388 of the Energy Policy Act of 2005 – Alternative Energy-Related Uses on the Outer Continental Shelf (FR 77345 – 77348, December 30, 2005).

CLF is the oldest and largest regional environmental advocacy organization in the nation, founded in 1966. During its 40 years, CLF has been actively involved in a broad range of public policy issues that have affected or threatened to affect the natural and human resources of New England. Regional marine resource protection issues have been a priority area for CLF since the mid-1970's. CLF has been active in opposing Outer Continental Shelf (OCS) oil and gas leasing in New England's offshore waters since 1977. CLF has also been heavily engaged in federal fisheries management in the Gulf of Maine, Georges Bank, and southern New England waters; in permitting proceedings related to submarine pipeline and cable proposals; in various commercial development projects proposed for location on the OCS; in marine research, habitat mapping and protection initiatives; and in marine endangered species protection throughout the New England region.

I. General Comments

CLF is committed to ensuring that environmentally important renewable energy development occurs in New England in a timely manner, in the right locations, subject to terms that fully protect the public interest, and through processes that ensure ample public input. Our terrestrial and marine ecosystems and associated natural resources and many of our most critical regional economies, such as fishing, are at substantial risk to the predicted changes associated with climate change. Renewable energy

62 Summer Street, Boston, Massachusetts 02110-1016 • Phone: 617-350-0990 • Fax: 617-350-4030 • www.clf.org

MAINE: 14 Maine Street, Brunswick, Maine 04011-2026 • 207-779-7733 • Fax: 207-779-7373

NEW HAMPSHIRE: 27 North Main Street, Concord, New Hampshire 03301-4930 • 603-225-3060 • Fax: 603-225-3059

RHODE ISLAND: 55 Dorrance Street, Providence, Rhode Island 02903 • 401-351-1102 • Fax: 401-351-1130

VERMONT: 15 East State Street, Suite 4, Montpelier, Vermont 05602-3010 • 802-223-5992 • Fax: 802-223-0060

Conservation Law Foundation

presents a viable alternative to energy production that produces greenhouse gas emissions. In New England, marine renewable energy presents one of the few options this region has for utility-scale renewable energy production.

The following core principles should inform any regulatory framework for alternative energy projects in the OCS. These principles are complementary to existing federal law, as many of them are derived from existing federal schemes including the Ocean Thermal Energy Conversion Act (OTEC Act):

1. **Offshore renewable energy (wind, wave, and tidal energy) development is fundamentally different from oil and gas extraction and related activities, and therefore should be subject to a separate regulatory framework.** Impacts of properly sited and managed offshore renewable wind projects should generally be limited to the installation and dismantling of structures that are attached to the seabed. Once in operation and operated according to appropriate mitigating conditions, renewable wind projects have fewer impacts and risks compared to oil and gas operations.
2. Given the forecast range of harms to New England from climate change, MMS should make every effort to **expedite the siting of wind energy projects in environmentally appropriate locations.** In no event should the program be more burdensome, costly, or time-intensive on the alternative energy developer than MMS's current programs are for oil or gas development in the OCS.
3. The purpose of MMS's regulatory program for alternative energy should be to **establish a comprehensive regime to permit and promote development of appropriate wind, wave, and tidal energy projects in a manner that, first, seeks to avoid harm to the environment; second, minimizes unavoidable harm; and, third provides proper mitigation of unavoidable harms.**
4. MMS's regulatory jurisdiction should respect and **integrate the positions and views of other federal agencies with expertise in marine resources** and marine commerce to the maximum degree in all planning, permitting, and administration activities, including particularly the biological and oceanographic expertise of NOAA Fisheries and NOAA Ocean Service.
5. Area planning and screening as well as project-specific reviews and permitting processes should **include, to the extent practicable, state environmental and marine resource agencies and governors from affected states.**
6. Construction of an offshore renewable energy project should be **fully subject to existing federal law**, including the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Magnuson-Stevens Fisheries Conservation and Management Act. CLF notes that MMS acknowledges the applicability of such other regulatory programs and protocols in the Federal Register notice.
7. Any **financial obligations** that come with renewable leasing arrangements should be **tailored to the "non-consumptive" nature of renewable energy production**, which differs from conventional oil and gas resource development projects, is non-extractive, and has lower

Conservation Law Foundation

environmental impacts and risks than other offshore facilities based on extractive industries. The agency should also evaluate the need to structure any royalty payments in a way that is appropriate for an emerging industry.

8. Siting of renewable energy projects should be **avoided** in areas on the Outer Continental Shelf that meet the definition of a **Marine Protected Area (MPA)** contained in Executive Order 13158 (65 Fed. Reg. 34909 (May 26, 2000)) (“any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein”) and in **areas that contain biologically or physically unique or sensitive marine habitats**.
9. Offshore renewable energy legislation should authorize **term-limited leases**, rather than easements or rights of way, for eligible offshore renewable energy projects.
10. Leases for offshore renewable energy projects should be assigned on a basis that considers factors including the following: **minimum environmental detriment, timely commencement of operation, maximum net energy impact, and lower initial installation and operations and maintenance costs** to the extent that such differentials may significantly affect the ultimate cost to the consumer.

It bears emphasizing that the alternative-energy related use program established by Section 388 of the Energy Policy Act of 2005 is not retroactive. The permitting of the Cape Wind project, currently under MMS’s review, is not subject to this new program and is already in the process of an extensive environmental review. That review has already been extended for reasons that do not relate to the proponent’s obligations under current state or federal environmental or permitting law. CLF urges MMS to move the Cape Wind review forward as rapidly as possible in an environmentally responsible manner.

CLF would also recommend to the MMS Rules Processing Team the following document: “A Framework for Offshore Wind Energy Development in the United States,” produced by the Offshore Wind Collaborative Organizing Group (September 2005). The Offshore Organizing Group is comprised of staff from the Massachusetts Technology Collaborative, the U.S. Department of Energy, and GE. The effort memorialized in this document identifies the challenges and proactive strategies associated with offshore wind development and is the result of extensive consultations among a broad range of government, science, industry, conservation, and policy participants. Further information about the Organizing Group and the framework itself can be found at <http://www.mtpc.org/renewableenergy/owec.htm>.

Finally, CLF would point MMS to the two national ocean commissions, the U. S. Commission on Ocean Policy (2004) and the Pew Oceans Commission (2003), who have released thorough and thoughtful analyses highlighting the deplorable state of America’s oceans and coastal ecosystems. Both commissions found that our oceans, and the resources they support, are in trouble from coast to coast and in need of decisive action to restore their health and ensure that citizens across the nation continue to enjoy their many benefits.

Perhaps nowhere is this need for change better illustrated than in New England. The Gulf of Maine - one of the most biologically productive ecosystems in the world – is experiencing severe stress

Conservation Law Foundation

on nearly every aspect of its ecosystem. This is due to widespread coastal and ocean habitat degradation and loss, climate change due to increases in greenhouse gases resulting from our dependence on fossil fuels, resource depletion (most notably New England's famed complex of Atlantic cod and other species of ground fish), and pervasive point and non-point source pollution of marine waters. From our vantage point, there is no question that we need to dramatically alter the course of U.S. coastal and ocean management policies to protect this invaluable natural resource for generations to come.

To address the serious issues facing our ocean ecosystems, both commissions called for a comprehensive national policy on oceans and coasts, and an overhaul of the currently fragmented management system to create a much more coordinated and effective management structure. The Commonwealth of Massachusetts also recognized the need to overhaul state ocean resource management and created the Ocean Management Task Force to review state ocean policy and make recommendations for improvements. In March 2004, the Ocean Management Task Force released its report to the Secretary of Environmental Affairs along with a suite of recommendations -- the cornerstone of which was a call for comprehensive ocean resource management planning legislation to reverse the state's "first come, first served" *ad hoc* approach to ocean resource development. Responding to the same concern, the State of Maine has also undertaken a 2-year "Bay Management Study" to examine potential new and innovative concepts for the management of its marine waters.

CLF shares this concern. CLF has advocated the development of comprehensive, ecosystem-based ocean management protocols and programs for some time. State ocean waters, the US territorial seas, and the Exclusive Economic Zone are a source of ecological goods and services that are critical to the economy and the quality of life in New England. With good stewardship, the wealth of our oceans can be the foundation for our maritime and ocean-based economies as well as the source for inspiration and well-being generation after generation, much as they have been in generations in the past.

Our oceans have become over-used. Human development activities now threaten the ability of our regional oceans to provide the abundance and diversity of marine life that they once did. As a common property resource, this overuse was inevitable: "[r]uin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all." G. Hardin, "Tragedy of the Commons," *Science* 162(1968):1243-1248.

While various federal agencies have attempted to thwart this inevitable "rush to ruin" by developing proactive planning to control access to and to restrain exploitation of the ocean's renewable and nonrenewable bounty, the programs too often do not cross-reference each other and in many areas there is no proactive planning at all. Too often, priorities are set by the market and individual entrepreneurs, not by the government seeking to ensure that the "tragedy of the commons" is avoided.

While good, viable, environmentally-protective projects can continue to emerge and be permitted notwithstanding the current patchwork regulatory framework, there is a pressing long-term need for ecosystem-based comprehensive ocean management that provides for the development of ocean resources in a way that ensures the long-term health of the marine ecosystem. CLF would urge MMS to use the opportunity of this program to work diligently with other federal and state jurisdictions to build such an integrated fabric of comprehensive oceans planning.

II. Proposed Program Comments

Conservation Law Foundation

The following comments correspond to the numeric identification and topical ordering in the Advanced Notice of Proposed Rulemaking. **Note: Not all questions are answered.**

1. Are there regulatory regimes, either in the US or abroad, that address similar or related issues that should be reviewed or considered as MMS moves forward with the rulemaking process?

In this regard and pointing to this model as a beneficial long-term outcome, CLF would recommend the initiative of the Australian government in developing appropriate zones and use restrictions for the Great Barrier reef. Through an iterative scientific and public outreach process, this regional sea is now managed under a comprehensive plan that identifies where human activities are prohibited as well as where human activities are encouraged. See http://www.gbrmpa.gov.au/corp_site/management/zoning/zoning_maps.html. As well, Australia has embarked on a broader program to develop a framework for integrated and ecosystem-based planning and management for all of Australia's marine jurisdictions. See <http://www.oceans.gov.au/home.jsp>.

In order to encourage the appropriate siting of alternative energy projects in the Gulf of Maine and surrounding waters, to protect sensitive and highly productive natural resource areas, and to reduce conflicting marine uses, MMS should consider developing a GIS-based mapping approach to siting future alternative energy projects in this region, developed on the basis of a consultative model such as was used in Australia. This process does not need to be fully integrative in the first iteration but it could form the base layers for a fully integrated resource approach.

CLF would recommend starting with wind energy. While other alternative energy technologies – wave-generated or current-generated power -- may emerge over time, the current technology that has the greatest importance to this region is wind energy. Focusing on wind, or perhaps also solar, is further recommended by virtue of the fact that the range of potential environmental effects associated with wind power are well known and uniformly applicable to each structure. The same cannot be concluded with respect to wave or current projects, where the technologies are less uniform and the range of potential environmental effects less well known.

In addition to wind intensity mapping, critical layers that could be generated – in many cases from currently and readily available data -- include biological (fish, marine mammals, birds, turtles, etc.) data, fisheries data, depth and substrate data, shipping lanes, and areas of critical or unique value (ecological, historical, or archeological). This process, while time consuming, would facilitate siting and reduce transactional costs for potential developers while guiding wind or solar development toward areas that present the lowest potential for use conflict or environmental harm.

Program Area: Access to OCS Lands and Resources -- Specific Questions:

2. Development scenarios

Access issues for resource and site assessment are highly variable depending on the nature of the assessment. CLF would recommend that MMS work with the U.S. Coast Guard and US Army Corps of

Conservation Law Foundation

Engineers to establish protocols and general permits for non-extractive, passive research and siting assessments that would authorize the establish of moored platforms for fixed time periods, not to exceed two years, subject to approval. Any site assessments using active research approaches or requiring fixed platforms should require individual permitting. Again, given the importance of facilitating offshore wind development in New England, the MMS should consider the efficacy of pre-assessing and pre-approving certain sites for particular alternative energy uses on a generic basis.

As noted above, CLF's long-term objective would be to zone areas of the Gulf of Maine, Georges Bank and surrounding waters where wind energy projects were going to be encouraged and provide incentives to developers who want to site in those areas such as reduced assessment or permitting requirements, cost-shared monitoring programs, accelerated review, reduced royalties or mitigation charges, and the like. In the absence of such an approach, CLF would recommend that the development approach be left to the developer. Clearly, the more extensive the proposed project, the greater the review and the environmental threshold would be. MMS should consider authorizing phased approaches where such approaches would reduce environmental uncertainties. In such phased cases, CLF would support the creation of an option document that would give a developer future rights to adjacent areas for future extensions. We do not see the need to require developers to secure access rights prior to assessment but can imagine that such rights may be appropriate under some circumstances at the developer's option.

4. What constitutes a geographical area of interest?

Ideally, site identification and development feasibility assessments should proceed on a regional basis, based on an underlying regional ocean management plan for defined large marine ecosystems (LMEs). One available framework for this approach is the Large Marine Ecosystem Program in NOAA Fisheries. CLF encourages MMS to convene interest groups around the Nation's defined LMEs to discuss strategies for identifying geographical areas of interest for resource and site assessment and development feasibility.

CLF does not take the position, however, that siting reviews and approvals should await the development of such a plan. The MMS, wherever and whenever possible, should continue to receive proposals from developers wherever they determine an appropriate energy market exists and where siting and technological issues are surmountable.

6. Structuring the competitive process

The alternative energy industry has not developed to the point that auctions are necessary or appropriate. In most cases, CLF would argue that a fixed-term, renewable 20 year lease is the appropriate instrument for a capital-intensive industry such as wind energy.

7. Broad-scale or regionally targeted?

MMS should target the program regionally and should engage relevant state and federal agencies at the earliest opportunity in program development. MMS should encourage regional initiatives to pre-select areas for marine wind-development, although the Service should retain the flexibility to consider, review, and permit individual projects outside of such a regional process.

8. & 9. Consideration of existing uses

The best way to avoid multi-use conflicts is through vigorous pre-screening of

Conservation Law Foundation

areas for wind power development. Short of that, MMS will have to work closely with the regional fisheries councils, NOAA Fisheries, the U.S. Coast Guard and the US Army Corps of Engineers on a permit-by-permit basis. CLF also recommends that liaison be established with the U.S. Navy to avoid conflicts with naval operations.

MMS should fully account for and evaluate the direct and indirect impacts of proposed alternative energy projects on existing marine uses, including commercial, recreational, and scientific uses as well as aesthetic interests and values, and historical and archeological interests and values. While the Service seems to contemplate “human” uses in this item, CLF would emphasize that various marine mammals, fish, and turtles are also existing users of the marine system and often have predictable patterns of use, albeit with historic variations. It is CLF’s belief and assumption that in most cases, existing human and non-human uses of New England waters can continue and accommodate wind energy development.

The challenge for MMS is to avoid negative interactions between alternative energy development at sea and other protected and important existing marine uses. NOAA Fisheries and other scientific organizations have extensive data on fisheries landings over time, marine mammal critical habitat, and areas of intensive biological activity. It is important to fully analyze this data over time as fish and mammal concentrations can shift over time as environmental circumstances change. While there is less abundant marine bird data, there is still abundant data and many bird species will be highly correlated with certain fish species on which they forage. There is also excellent nesting data on many species with the US Fish and Wildlife Service.

10. Permits for data collection

The need for permits for data collection depends on the data being collected: some data collection methodologies are passive and do not pose any risk to the environment or marine biota. MMS should not impose any requirements on the collection of this data. Other data collection can be problematic and should be regulated. CLF believes that non-proprietary data collection should be required of all lessees in the OCS as a condition of a lease and should be available for public review and analysis. This information would be valuable for weather, marine safety, and lease compliance purposes.

11. Approval Criteria for a Project

The overriding interest for this program is to appropriately encourage the development of financially viable marine wind projects consistent with the environmental standards already established under the various fisheries, wildlife, and environmental review statutes that govern such activities. MMS should review these existing criteria and develop specific approval criteria for renewable energy facilities based on these existing standards. It is relevant that wind energy projects are being promoted to offset the climate change effects of fossil fuel energy production and, from that perspective, are environmentally beneficial projects.

With respect to the evaluation criteria for competing projects, CLF suggests that there should not be many alternative energy projects that compete with each other. To the extent that alternative energy projects do compete with each other, the Service should advance the project with the highest energy production with the least environmental impact. Again, given the impending reality of climate change and the limited options in New England for wind power production, the most pressing issue here is to minimize regulatory hurdles on these critical alternative energy projects and to process all applications and permits as rapidly as is consistent with responsible environment review.

Conservation Law Foundation

Program Areas: Environmental Information, Management, and Compliance—Specific Questions

CLF is pleased to see the MMS confirm that the new regulations will require compliance with all pertinent environmental laws and regulations. That said, CLF is concerned that MMS does not have the technical and regulatory operational experience with many of the marine laws that it will now be overseeing. CLF recommends that a working group and formal liaison be established with NOAA Fisheries, US Fish and Wildlife Service, and the US Coast Guard to ensure that there is consistency and conformity across the agencies with respect to legal and regulatory requirements and interpretations.

CLF is also pleased to see that the MMS has committed to utilizing adaptive management approaches with respect to these projects. Adaptive management is a valuable approach but should not be misapplied to allow projects to go forward without full environmental review. Adaptive management is not a substitute for careful and comprehensive environmental review. Where critical information will not be available until projects are operational, adaptive management is appropriate but requires intelligent monitoring protocols and objective performance requirements built into the lease as conditions to succeed.

12- 17 generally.

CLF refers the MMS to the Framework for Offshore Development of Wind Energy Development: <http://www.mtpc.org/renewableenergy/owec.htm>.

12. Types and levels of information

All projects should receive the same level of environmental and resource impact scrutiny that apply to any other major action requiring federal permitting or review-and-approval in the OCS and territorial sea. As experience is gained with siting alternative energy structures, the permitting needs should be tailored as narrowly as is reasonable to be able to capture the foreseeable environment impacts. Ideally, several years of data or their historical equivalent should be available for review but the salient issue is whether an applicant has properly characterized the type and scope of potential environmental impact that can be anticipated.

As noted above, CLF believes that one of the benefits of a regional approach in New England is that a larger tract of ocean could be pre-screened for suitability based on low fisheries value, low bird abundance, no marine mammal history, and adequate wind. With pre-screening and appropriate programmatic environmental review, data needs for individual projects could be minimized and wind projects attracted to that area. Such a concentration would allow efficient post-construction monitoring and energy transmission.

13. Site-specific studies and responsibility for studies

See above. The developer/s should be responsible for the timing and adequacy of any studies leading to a decision to approve a leasehold and establish operating conditions.

14. Goals of monitoring, mitigating, and enforcement

The goals of monitoring should be to allow an objective, third party characterization of a project's impacts on the environment to determine whether anticipated conditions and projected impacts accurately reflect reality. Particular attention needs to be paid to the difficult challenge of quantifying and

Conservation Law Foundation

identifying bird strikes to a species level at sea. Avoidance behavior under water is another issue that should be carefully evaluated and that is difficult to monitor. Research should be invited on this challenging need. Mitigation should be required to offset any unavoidable environmental impact and should preferably be directed toward either the species at issue or toward the location of the facility. Enforcement with the conditions of leasing is critical and MMS should estimate and factor the costs of enforcement into any lease fee arrangement. Liaison needs to be established with the U.S. Coast Guard in this area with respect to enforceability of conditions at sea as well as any protocols for enforcement to be done by the Coast Guard, whose resources are severely strained in the northeast.

15. Impacts and mitigation

The range of impacts and species of concern are well understood with respect to marine wind energy. The range of impacts and species of concern relative to wave or current projects is less well established and should be approached cautiously. Because forage and migration patterns of fish, mammals, and turtles change based on oceanic and climatic conditions, applicants need to provide a broad understanding of historic patterns, to the extent these can be known. See above on the challenges of compliance monitoring at sea.

16. Critical regulatory program elements

The environmental and operational reviews of the proposed project will fully elucidate the critical regulatory program needs. A precautionary approach needs to be taken with respect to the science and an effective adaptive management program with full public accountability and clear performance goals needs to be in place when the leasehold is created.

17. Monitoring of environmental management programs

CLF would expect that this monitoring activity be shared between the developer and the MMS. Government monitoring could be tasked to a third party marine educational institution but CLF would not be comfortable with a proprietary 3rd party undertaking the monitoring or the monitoring evaluation. All monitoring information and reviews should be publicly available and all data should be available for second party use, whether for scientific purposes or otherwise.

Program Areas: Operational Activities—Specific Questions

18. Alternatives to facilities removal

The circumstances surrounding the ultimate viability of a structure for re-use in the harsh marine environment are too variable to develop general positions on the efficacy or wisdom of reuse options. Complete removal and site restoration should be required and the costs of insuring that activity should be bonded by a 3rd party surety, with an escalating cost structure. Re-use options can be dealt with in the future when they arise with whatever new information is available at the time. Re-use should not grandfather a structure or leasehold into a different program area within MMS or within any other federal agency jurisdiction. New uses should be approached without any benefits or presumptions being given to the existing or prior alternative energy use.

21. Monitoring of operational activities

There should be at least one comprehensive annual inspection and operational evaluation of a project. Spot visits by the U.S. Coast Guard are also critical. CLF has not had good experience with 3rd party certification programs and therefore would not recommend that MMS use such models, at least in the first 10 years of the program.

Conservation Law Foundation

22. Monitoring diversity of alternative energy technologies

As noted above, the environmental and operational profiles of alternative energy projects, although potentially uniform and standardized within given technologies, can vary widely between technologies. For that reason, CLF would urge the MMS to concentrate in the first instance on protocols, permitting programs, and monitoring programs on a specific technology basis, i.e. freestanding marine wind turbines. Given the growing need and viability of wind, CLF would further urge that MMS concentrate on wind turbines first.

Program Areas: Payments and Revenues—Specific questions

23. Payment structure

Payments should charge for occupation of the seabed as well as a charge for the value of the public benefit being captured by the private entity, i.e. the wind energy in the case of wind turbines. In most cases, CLF does not anticipate that opportunity costs for other uses are sufficiently real to be charged to the alternative energy developer. By that, we mean that the mobility of fish, for example, is such that they will be susceptible to capture and harvest notwithstanding the presence of a wind turbine. With respect to subsurface mineral development, CLF is opposed to most of that development in the Gulf of Maine, as the MMS well knows, because of potential conflicts and impacts with fish production and habitat protection. Therefore, opportunity costs for foregoing development of those resources should not be charged to a marine user that is trying to displace reliance and consumption of oil and gas.

24. Infancy of industry

CLF would support a rate structure that takes into account the infancy of the alternative energy industry and the high front end costs associated with site development. The full revenue stream should be designed to be captured over the life of the project however.

27. Profitability of alternative energy

Given the location of these facilities in the public domain, there should be greater transparency about the profitability of these operations. While CLF is not in a position to contribute any information on this topic, we would encourage MMS to fully explore this question and develop appropriate models to understand profitability.

28. Public benefits of alternative energy to society

The positive environmental benefits of developing energy resources that do not involve the combustion of fossil fuels and the emission of pollutants that give rise to serious impacts on the public health and damage our climate are enumerated in numerous documents. CLF has addressed these issues most directly in the context of the review of the Cape Wind project. Those comments are in the record that the U.S. Army Corps of Engineers has transferred to MMS and are available online at http://www.clf.org/uploadedFiles/CLF/Programs/Clean_Energy_&_Climate_Change/Clean_Energy/Cape_Wind/20050223_cape_wind_comments.pdf

In particular we note that the question of the role of offshore wind in improving the environment is addressed at pages 2-5 and 7-11 of those comments. CLF's comments on the potential positive role of Cape Wind in particular and offshore wind in general might play in improving the reliability of the electricity system and providing direct economic benefits to consumers are addressed at pages 11-12 of those comments and in additional letter filed by CLF in that review which is available at

http://www.clf.org/uploadedFiles/CLF/Programs/Clean_Energy_&_Climate_Change/Clean_Energy/Cape_Wind/20050224_cape_wind_emissions_letter.pdf

It is also worth noting the specific analysis performed by the U.S. Department of Energy on this topic that is attached to the Cape Wind DEIS as Appendix 2.0-A. That analysis confirms the clear benefit that offshore wind can provide in relieving demand for natural gas for electricity generation during the critical winter months when concerns about competition between residential and commercial use of natural gas for heating and use of that same gas for electricity generation is at its height.

The fact that offshore wind power, and potentially other forms of ocean energy like wave energy that are driven by weather, has great potential for power production during a periods of great concern about energy supply, the coldest days of winter, should be acknowledged and factored into MMS decision making.

29. Surety bonds and other forms of security

Third party surety bonds should be required to ensure compliance with all permit conditions, including removal of the facility at the end of the lease or on abandonment of the lease. Abandonment should be strictly defined so that operators are not at liberty to “mothball” structures over extended periods of time (measured in months, not years). The MMS should also consider incorporating “penalty bond” language into its security instruments to reduce the burdens of enforcement on the agency.

Coordination and consultation—Specific Questions

30. Early stage consultations

MMS should convene regional strategy and program development teams, comprised of senior regional staff from all the relevant federal and state agencies. Consultations should also occur with appropriate agencies in Canada to anticipate “trans-boundary” issues and consultation requirements that may arise in the Gulf of Maine. A regional strategy document, authored by MMS and concurred in by all relevant agencies should be issued for public review and comment. Comment should also be solicited from the New England Fisheries Management Council and the Gulf of Maine Council on the Marine Environment. Scientific workshops should be convened with the region’s marine scientists to pre-identify issues and areas of particular concern in the environment from the perspective of siting alternative energy facilities. This program will be aided not only by MMS recognizing what the agency knows about the marine environment from its OCS experiences and expertise, but -- more importantly -- what it doesn’t know. There is general support for the development of marine wind energy in New England and the MMS can assume a cooperative and professional environment will exist for conducting these discussions.

As we have previously indicated, however, the priority is on siting particular projects as expeditiously as is reasonable as soon as developers are ready to move forward. The review and regulatory action on projects should not be delayed while programmatic consultations or plan develop occurs.

31. General program or regional program

See above. As we have already indicated, we believe that alternative energy development will move forward most expeditiously and most responsibly if MMS program elements are developed and MMS actions are taken on a uniform technology basis. We further believe that progress will be facilitated if regional initiatives are launched and supported. Naturally, there are a number of program elements that

Conservation Law Foundation

can be and should be developed nationwide such as fee structures, the nature of access rights, general v. individual permits issues, general monitoring and reporting protocols, etc.

32. Federal/state cooperatives

Federal/state cooperation is critical to program success over time and is required in most cases by applicable federal law, including the Coastal Zone Management Act and approved federal coastal zone management plans. As noted above, we believe that a productive dynamic can be established between the federal government and the state governments on this issue. We would encourage the identification of areas of the coastal sea and OCS that are preferred for alternative energy development and areas that should be excluded from alternative energy development. Consistency with such pre-identifications should be required of all projects once the program is approved in a region or at a sub-regional level, provided that the MMS is satisfied that the sites identified for alternative energy are technologically and financially viable at a utility-scale standard.

As repeatedly noted above, given the pressing imperative for alternative energy development and the strict scrutiny being given to existing proposals such as Cape Wind in Nantucket Sound, CLF would be strongly opposed to the application of any prescreening or federal/state coordination with respect to such facilities beyond what is already required as part of the on-going permitting process.

34. Codification of consultation process

The regulations should indicate that full and broad consultation is encouraged and should establish a mechanism by which such consultations are encouraged to occur, including providing for 3rd party dispute resolution procedures and/or alternative rulemaking mechanisms to interested regions.

* * * * *

Thank you this opportunity for comment. As the Service undoubtedly knows from earlier comments and statements, CLF has been concerned that MMS, as an economic development agency, does not have the expertise with stewardship of the living marine environment or the organic agency mission to protect and conserve that living marine environment. We are pleased to see the agency exploring ways that the regulatory program that is developed for the production of offshore alternative energy can be done in full consultation with sister federal agencies that have such expertise and missions. That can only benefit the alternative energy program and minimize implementation conflicts and delays.

We look forward to working with MMS in New England in the coming years to ensure that this critical alternative energy program reaps the substantial climate change public benefits that we believe it is capable of without adversely affecting the abundance and diversity of our marine environments or the regional and local economies that have depended on access to those resources for generations.

Sincerely,

Peter Shelley
Vice President

Conservation Law Foundation

Director of the Massachusetts Advocacy Center